



BAIL SLIP in Crl.R.C.No.1131 of 2016

The Appellant / Accused namely Gnanamani S/o.Elumalai was directed to be released on bail as per order of this Court dated 12/01/2017 in Crl.M.P.No.9855 of 2016 in Crl.R.C.No.1131 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1131 of 2016

Gnanamani

... Petitioner

Vs.

State rep. by
Inspector of Police,
Chithamur Police Station,
Kancheepuram District.
(Crime No.17/2007)

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the judgment dated 09.03.2016 in C.A.No.40 of 2015 passed by the learned Additional District and Sessions Judge, Chengalpet, Kancheepuram District confirming the Judgment dated 21.05.2011 in C.C.No.63 of 2008 on the file of the Judicial Magistrate, Madurantakam.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned District and Sessions Judge, Chengalpet dated 09.03.2016 made in C.A.No.40 of 2011 confirming the judgment of the learned Judicial Magistrate, Madurantakam dated 21.05.2011 made in C.C.No.53 of 2008.

2. The case of the prosecution is that on 21.01.2007 at about 12.30 p.m, the accused entered into the house of the de facto complainant by removing the tile on the roof and stole a pair of ear stud, a pair of matal, two gold chains and one pair of anklet from the lockers of the Almirah (bureau).



3. On the complaint given by PW1 on 21.01.2007, PW11/Sub Inspector of Police registered a case in Crime No.17 of 2007 under Sections 457 and 380 IPC and prepared the FIR. After registering the case, PW-11/Sub Inspector of Police took up the case for investigation, went to the place of occurrence and prepared observation mahazar (Ex.P12) along with rough sketch (Ex.P13) in the presence of the witnesses and examined some of the witnesses. Further investigation was taken up by PW13 and he arrested the accused on 13.11.2007 at about 4.00.p.m and recorded the confession statement in the presence of the witnesses. On the confession given by the accused, he recovered the material objects from PW6 and PW9 in the presence of PWs 4 and 5 under seizure mahazar. He examined the rest of the witnesses. He also collected the finger prints from the scene of occurrence and sent the same for examination of the Fingerprint expert. After completing the investigation, he filed the charge sheet against the accused under Sections 457 & 380 IPC.

4. PW12- Fingerprint expert has stated in his evidence that he collected four fingerprints from the place of occurrence and out of which one fingerprint resembled the sample finger print of the accused, which was sent for comparison.

5. After the case was taken on file and copies were furnished to the accused and on perusal of the prima facie materials on record, charges have been framed against the accused under Sections 457 and 380 IPC. When the accused was questioned, he denied the charges and claimed to be tried. Hence, trial was conducted.

6. On the side of the prosecution, 13 witnesses have been examined as PW1 to PW13 and 19 documents were marked as Exs.P1 to P19. No witness was examined and no document was marked on the side of the defence. After concluding the trial and considering the materials available on record, the learned Trial Judge found the accused guilty for the offence under Sections 457 and 380 IPC and convicted and sentenced him as under:-

Offence	Punishment Imposed
457 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- in default to undergo three months simple imprisonment
380 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- in default to undergo three months simple imprisonment

7. The appeal preferred by the accused challenging the judgment of the Trial Court was dismissed by confirming the



judgment of the Trial Court. Aggrieved over that, the accused has preferred the present revision case.

8. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl. Side) appearing on behalf of the respondent and perused the entire material available on record.

9. Point for consideration:-

Whether the conviction and sentence of the first accused for the offence under Sections 457 and 380 IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

10. The learned counsel for the revision petitioner submitted that the material objects, which are alleged to have been recovered on the confession of the accused were not marked as Material Objects before the Court and hence, there is nothing available on record to connect the accused to the occurrence. He has further submitted that since no Material Objects identified by the complainant and the other witnesses, who were present at the time of recovery, no credence can be given to the case of the prosecution. He has further submitted that despite the evidence of the handwriting expert's report is to the effect that one of the fingerprints collected from the scene of occurrence found to be matching with the alleged sample fingerprint of the accused, the prosecution has not established how the sample fingerprint was obtained and whether it was obtained by following the due procedure; on this aspect, no witness was examined and hence, the Court cannot convict the accused based on the evidence of the fingerprint expert alone.

11. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the recovery witnesses have deposed evidence in favour of the prosecution and the fingerprints available in the scene of crime also found to be matching with the sample fingerprint of the accused.

12. On perusal of the records, it is disappointing to note that the prosecution had omitted to show and mark the material objects when PW1 was examined. The Material Objects were not shown to PW1 and the same were not identified by them. Even PW1's husband, who was examined as PW2 has not identified the Material Objects before the Court. The witness, who was said to be present at the time of the recovery (PW4), has also not given a clear evidence in favour of the prosecution. In fact, only during the chief examination, he had given an assertive answer on the leading question put by the prosecutor. PWs.6 and 8, who are said to be the pawn brokers and from whom the Material Objects were recovered, were also not properly utilised by the prosecution



to identify the Material Objects involved in this case. Despite one of the fingerprints alleged to have been recovered from the scene of crime was matching with the sample signature, Investigation Officer has not stated in his evidence that the finger print was recovered from the scene of crime with the help of a scientific expert. Further, it is not proved before the Court that the sample fingerprints were obtained from the accused in a manner known to law.

13. In cases of this nature, the production of Material Objects and its identification through the relevant witnesses are very essential. Since it is patently missing, the Courts below ought to have taken note of the said omission and appreciated the evidence in a proper perspective. Since the Courts below had overlooked the doubtful circumstances and failed to give benefit of doubt to the accused, I feel that the judgment of the lower Court warrants interference.

14. In the result, this Criminal Revision Case is allowed. The judgment of the learned Additional District and Sessions Judge, Chengalpet, Kancheepuram District made in C.A.No.40 of 2011 is hereby set aside. The Petitioner/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1.The Additional District and Sessions Judge,
Chengalpet.
- 2.The Judicial Magistrate, Madurantakam.
- 3.The Chief Judicial Magistrate, Kancheepuram.
- 4.The Inspector of Police,
Chithamur Police Station, Kancheepuram District.
- 5.The Public Prosecutor,
High Court of Madras, Chennai-600 104.

+1cc to Mr.T.R.Ravi, Advocate SR. No.63437

Cr1.R.C.No.1131 of 2016